

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 18 General Oppose

This section summarizes general oppose comments. Summaries on specific issues regarding the FL Assumption are addressed in other sections of this document.

Approximately 400 unique commenters and an additional seven form letters representing more than 2,400 submissions generally opposed the Florida Assumption. Commenters that opposed the Florida Assumption included many private citizens, several companies, a religious congregation, one member of the U.S. House of Representatives, the City of South Miami City Council, and 31 non-governmental organizations.

The Florida Assumption will negatively impact Florida's environment, public health, safety, and economy

Many of the commenters opposing the Florida Assumption stated that it will negatively impact Florida's environment, public health, safety, and economy for the reasons outlined here as well as the topic-specific sections of this document. Commenters noted that Florida has the largest wetland ecosystem in the lower 48 states. Commenters expressed concern at the ongoing trend in wetland loss in the state and noted Florida has already lost substantial amounts of historic wetlands and the remaining wetlands are at increased risk from the projected human population increase as well as climate change.

Commenters emphasized the critical role of wetlands in Florida. Commenters listed a variety of important wetland benefits that have been compromised by wetland loss and are endangered by further wetland loss that they contend the Florida Assumption will exacerbate.

- Wetlands provide natural water treatment and are critical to clean water and recharging the groundwater supply that Floridians depend on for their drinking water. A commenter also specifically noted that wetlands treat agricultural and stormwater runoff, stripping away nutrients that fuel toxic algae blooms. Another commenter asserted that potable water is going to become a problem in Florida in the next 10 years and another commenter noted the problem of saltwater intrusion.
- Wetlands provide crucial fish and wildlife habitat that supports Florida's biodiversity, including for federally-listed endangered species.
- Wetland biodiversity and beauty support Florida's important tourism industry (fishing, boating, bird watching and other ecologically based industries) that bring in billions of dollars to business and state and federal revenue. Everglades National Park alone generates more than \$100 million annually in tourism revenue. The outdoor recreation industry generates \$58.6 billion annually and Florida is widely recognized as the Sport Fishing Capital of the World. Florida waterways support billions of dollars in commerce each year and create tens of thousands of jobs for Floridians.

- Wetlands provide a natural infrastructure that helps store and buffer flood waters from storm events including hurricanes preventing property damage and the loss of human life. One commenter stated that according to NOAA, we face a warmer, wetter climate with more storms and excessive rain.
- Wetlands also provide dry season wildfire resilience.

Several commenters used the term “free ecosystem services” to describe the dollar value of the items list above, which are in the billions of dollars and any risk posed to these waterways is a direct risk to Floridians’ economy and livelihoods.

Loss of federal resources and oversight would be detrimental

Many commenters opposed the Florida Assumption because they feared it would result in a loss of federal oversight and resources that would hinder wetland protection and result in more loss of wetland than under the current system. Commenters did not think the current process should be changed at this time of wetland loss by eliminating federal agency involvement. One commenter stated this is not the time to be changing entities with the inherent loss of information. This is the time for intense scrutiny.

Many commenters argued that the permitting process needs multiple agencies and the federal agencies such as the Army Corp of Engineers, Fish and Wildlife Service, Marine Fisheries Service and Environmental Protection Agency should have a role in this process that they see as reduced by the Florida Assumption. They go on to argue that the multi-agency process provides more resources and expertise and better ability to coordinate elements of a thorough Section 404 program than the state alone. Commenters also said that federal oversight role is necessary to ensure the necessary objectivity and independence from local politics and private economic interests.

Commenters asserted that retaining responsibility at the federal level ensures consistency and uniformity in oversight and application of legal standards in Florida relative to similar activities across the country. Commenters noted that Florida wetlands include federal lands and represent a trust and investment for all U.S. citizens regardless of state boundaries. Several commenters pointed out the need for continued federal oversight over the Greater Everglades ecosystem. Multiple commenters also pointed out the loss of NEPA review if the Florida Assumption goes into effect, and the much broader review currently performed for Section 404 permit applications.

A number of commenters provided several specific examples related to the Everglades with its interlocking mosaic of wetlands managed by both federal and state and local agencies where they asserted that the current federal role is critical and should remain as is.

A commenter said that they are grateful that NEPA had to be followed for the proposed SFWMD EAA reservoir and stormwater treatment area (STA), which allowed for additional time for an Environmental Impact Statement, for federal review of the proposed alternative, and for more meaningful public input for the massive and costly project that both the state and local agencies have been rushing despite many valid concerns. As a result, the Section 404 permit includes

special conditions that FDEP may not have required, such as additional monitoring to verify water quality requirements are met, before water is delivered to the water conservation areas of the Everglades.

Another commenter also emphasized the need for continued federal oversight over impacts to Everglades restoration and to Florida's national parks and surrounding interconnected ecosystems. The commenter noted that the federal government is a partner to the world's largest ecosystem restoration project, Everglades restoration, authorized by Congress under the Comprehensive Everglades Restoration Plan (CERP). The commenter says the federal government has made extraordinary investments in Everglades restoration and has authorized Section 404 permits only after undertaking all necessary NEPA analysis. The commenter explained that there is a need to ensure that the many benefits of Everglades restoration and the extensive investments already made are not undermined by inadequate oversight of permits impacting wetlands and waters across the region. To date, the commenter says Federal oversight of the CWA Section 404 Program has ensured robust stakeholder engagement in many decisions and plans affecting Florida's wetlands and thus the national parks that anchor the Greater Everglades ecosystem. As it stands, the commenter indicated that NEPA applies, which helps ensure the highest level of public engagement and environmental analysis. The commenter asserts it is unlikely that this level of public engagement will continue with state assumption., which helps ensure the highest level of public engagement and environmental analysis.

Florida state and local agencies do not have the necessary capabilities and resources

The commenters' concern summarized above for retaining federal involvement was also based on the belief that the Florida Department of Environmental Protection and local agencies were prepared to assume responsibility for the Section 404 program.

Many commenters asserted that Florida has a bad track record for protecting the environment. and managing natural lands for the benefit for all who depend on the wetlands. Commenters stated that this was not the time to change the process, stated that Florida needs to improve current wetland programs before assuming new ones, and pointed out that both federal and state wetland regulatory programs require "no net loss of wetlands." The commenters recalling this pledge by former President G.H.W. Bush, asserted that this objective has not been met by either federal or Florida programs on either preserving functions or acres based on Audubon, National Oceanic and Atmospheric Administration (NOAA), National Academy of Sciences, and US Fish and Wildlife Service analyses and data (see, for example, NOAA wetland loss data at [[HYPERLINK "https://coast.noaa.gov/ccapatlas/%20"](https://coast.noaa.gov/ccapatlas/%20) \h]. Multiple commenters pointed to Florida's poor track record enforcing the Clean Water Act, specifically that FDEP is behind in establishing the TMDLs in most watersheds in the state, does not provide the oversight for Best Management Practices as pledged, and they do not properly manage the Basin Management Action Plans to get waterways off the impaired listing. A commenter continued that research has proven that BMPs for stormwater and agriculture are not meeting their intended pollution reduction goals, and there are sites across the state that have not had consistent water quality testing in years. The commenters suggested that FDEP focus its resources on its existing programs before assuming the Section 404 program.

Commenters expressed concern that FDEP does not have sufficient staffing to do an adequate job and is struggling now with its existing program. Commenters said that FDEP has had severe budget cuts over several years and one commenter asserted that the state legislature, which controls the budget, really does not care much about the wetlands. Another commenter noted that Florida revenue losses over the next two years due to the COVID-19 pandemic are projected to be \$5.4 billion and the governor has directed all state agencies to cut their current budgets by 8.5%. Several commenters were concerned about the increased costs to state government due to the funding need to implement the Section 404 program.

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Development interests will receive priority over wetland protection

Many commenters opposing the Florida Assumption expressed concerns that development interest would be prioritized over wetland protection by state agencies.

Commenters emphasized that the FDEP is too close to local commercial interests and does not have the checks and balances needed when reviewing Section 404 permit applications from other state agencies and water management districts. Several commenters likened FDEP oversight to allowing the fox to guard the henhouse. A commenter asked who will speak for protecting or properly managing or determining what happens to our remaining wetlands, and the commenter went on and said it would not be the FDEP.

Many commenters viewed the Florida Assumption as a gift to developers to build on and remove wetlands, costing all citizens in the process. Commenters pointed to the state claim that the Florida Assumption will save time and money for developers and lower housing prices as cause for concern and some commenters said it would open the door to more rampant development. Commenters noted that real estate development pressures are always increasing in Florida, even during the current economic slowdown. One commenter added that legislation has passed to make it more difficult for citizens to pass a ballot initiative to provide environmental protections, and recent court decisions have made it virtually impossible to file legal objections to massive developments and toxic waste disposal into state waters.

Several commenters said the state's priority should be to preserve wetlands and not permit building. Commenters observed that governors have eliminated budgets for buying land to keep it natural and preserve its ecosystem.